ACTIVITY REPORT ON THE ADMINISTRATION OF THE *ACCESS TO INFORMATION AND PROTECTION OF PRIVACY (ATIPP) ACT*

April 1, 2008 to March 31, 2009

Yukon
Highways and Public Works

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OVERVIEW OF THE *ATIPP Act*

The Yukon *Access to Information and Protection of Privacy (ATIPP) Act* came into effect on July 1, 1996. The *Act* guarantees certain fundamental rights for citizens including

- access to Yukon government records with certain exceptions;
- individual access to their own personal information and right to request correction;
- protection of personal privacy; and
- protection against unauthorized collection, use, disclosure, or disposition of personal information.

> *"The overarching purpose of access to information legislation – is to facilitate democracy. It does so in two related ways. It helps to ensure first that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry."*
>
> Justice LaForest [1997] 2 S.C.R. 403 Dagg v. Canada (Minister of Finance)

To Whom Does The *ATIPP Act* Apply?

The *ATIPP Act* applies to all records held in all Yukon government departments as well as boards, commissions, foundations, corporations, and other similar agencies that are deemed to be agents of the Government of Yukon. Under the Act and in this report, these are referred to as "public bodies".

Paramountcy

The *ATIPP Act* is a piece of legislation of general application which normally prevails (is "paramount") over all other Yukon legislation. However, the *ATIPP Act* includes a provision that allows for exceptions to this rule.

Section 4 of the ATIPP Act states that

4 *If a provision of this Act conflicts with a provision of another Act, then the provision of this Act prevails unless the other Act states that it, or the provision of it in question, is to apply despite this Act or despite any Act.*

If there is a conflict between these provisions and the provisions of the *ATIPP Act*, then the provisions of the following Acts or regulations prevail.

Legislation Paramount Over The *ATIPP Act*			
Minister Responsible	**Title of Act**	**Section**	**Applicability**
Health & Social Services	*Children's Act*, R.S.Y. 2002, c.31.	s. 99	Adoption provisions only
	Vital Statistics Act, R.S.Y. 2002, c.225.	s. 2	Entire Act
	Child and Family Services Act, R.S.Y. 2009, c.1. (not yet in force)	s. 132(3), s. 172(1)	Confidentiality of adoption files, definition of public body
	Young Persons Offences Act, S.Y. 2002, c.232.	s. 33, s. 35	Restriction on publication, disclosure of records
Energy, Mines & Resources	*Oil and Gas Act*, R.S.Y. 2002, c.162.	s. 103	Confidential information
Justice	*Maintenance Enforcement Act*, R.S.Y. 2002, c.145.	s. 6	Enforcement information
	Safer Communities and Neighbourhoods Act, S.Y. 2006, c.7.	s.32(1)	Complainant confidential. Note that definitions in the *Act* include reference to ATIPP for purposes of its application
	Human Rights Act, R.S.Y. 2002, c.116.	s.39	Entire Act
Executive Council Office	*Statistics Act*, S.Y. 2003, c.27.	s. 19	Entire Act
Community Services, Highways & Public Works	*Motor Vehicles Act*, R.S.Y. 2002, c.153.	s. 98 (3)	Inspecting of accident report only
Community Services	*Securities Act*, S.Y. 2007, c.16.	s.24(4), s.36, s.85	Information sharing, confidentiality of investigations and disclosure of information, review of market participants (discretionary)
Public Service Commission	*Public Service Act*, R.S.Y. 2002, c.183.	s. 199 (2), s. 201	Conflict of interest provisions only regarding disclosure of report (with respect to deputies), statement about report must be issued
Finance	*Financial Administration Act*, R.S.Y. 2002, c. 87	s.2(1)	Entire Act

Note: Some federal legislation gives the Yukon government control over certain information. In such cases, the privacy and disclosure provisions of the federal legislation prevail over the *ATIPP Act*. One example is information held by subject to the *Youth Criminal Justice Act*, S.C. 2002 c.1; any disclosure of such information must be in accordance with s.118 of the *Act*, despite any seemingly applicable *ATIPP Act* provisions.

WHAT IS THE ROLE OF THE ATIPP OFFICE?

The ATIPP Office supports the minister responsible for the *ATIPP Act* by

- processing formal requests for information from the public (acts as single entry point);
- providing services, support, and leadership to assist public bodies in complying with the *ATIPP Act*;
- promoting awareness, and providing access and privacy training regarding the *ATIPP Act;*
- leading strategic policy initiatives across government;
- developing corporate-wide access to information, and privacy policies and practices to provide guidance to departments; and
- liaising and coordinating efforts with the Information and Privacy Commissioner, government departments and agencies, other governments, and other key stakeholders.

There are currently three staff members involved in the activities listed above. These include the Records Manager, who has overall responsibility for the administration of the *Act* (across the Yukon government), the ATIPP Act Coordinator, and the ATIPP Office Assistant.

ATIPP Office Contact Information

Mailing Address	Information and Communications Technology Department of Highways and Public Works Government of Yukon Box 2703 Whitehorse, Y.T. Y1A 2C6
Contact Information	Phone: (867) 393-7031 Toll free: In Yukon, 1-800-661-0408, local 7031 Fax: (867) 393-6916 Email: atipp@gov.yk.ca Website: www.atipp.gov.yk.ca
Physical Location	Yukon Government Main Administration Building 2071-2nd Avenue Whitehorse, Lower Floor

National Initiatives

The Records Manager continues to participate on a committee of federal, provincial, and territorial governments to promote the harmonization of access and privacy legislation, and development of consistent policy and guidance for the public sector. Committee members share resources such as best practices, and training materials. A web tool has been developed to promote the sharing of key privacy resources between jurisdictions. This tool is publicly available at www.privacytoolbox.ca.

For further information on this initiative, please contact the Records Manager at (867)667-8211.

Training And Resources

The ATIPP Office is responsible for educating and training Yukon government employees on the administration of the *ATIPP Act*.

Currently, the ATIPP Office manages four training programs:

1. a three-hour "Introduction to the ATIPP Act" course, which introduces individuals to access and privacy principles;
2. an information management component within the Yukon government orientation sessions for new employees;
3. customized training sessions for departmental branches or units;
4. training sessions for new ATIPP Coordinators on how to process and respond to ATIPP requests.

ATIPP Act Review

In the fall of 2008, the Department of Highways and Public Works began a review to amend the *ATIPP Act,* in keeping with the government's commitment to improve access to information while ensuring the protection of individuals' privacy.

The consultation focused on eight issues that addressed key concerns of both the Government of Yukon, and the Information and Privacy Commissioner.

Approximately forty submissions were received from the public, business, and professional organizations as well as from within government.

Legislation is being drafted and the current plan is to introduce the amended *ATIPP Act* into the Legislature for debate in fall 2009.

A QUICK GUIDE TO FORMAL ACCESS REQUESTS

Submitting A Request

The process for requesting records from the Yukon government is prescribed in the *Access to Information and Protection of Privacy Act*.

Request forms are available to the public in government offices and public buildings, and are also available on the ATIPP website at www.atipp.gov.yk.ca. The applicant does not pay a fee to submit an ATIPP request.

You can complete a request form, outlining what government records you want, and then submit the request to the ATIPP Office, preferably in person (see page 4 for the physical location). The ATIPP Office will open up a file and forward the request to the ATIPP Coordinator in the public body that has the desired records.

Responding To A Request

Once a public body receives an access request, it has 30 days in which to respond. The clock starts ticking the day the request is activated and sent to the ATIPP Coordinator for the corresponding department.

The ATIPP Coordinator will

- work with the applicant, as needed, to clarify the request;
- prepare a fee estimate, if necessary;
- conduct a search for relevant records within the department, which often means working with others within the public body;
- review the records to see if any exceptions are applicable; and
- ensure a response is provided within the time limit.

Information On Fees Paid

The Access to Information Regulation lists the services and related fees for processing ATIPP requests.

Under the Regulation, public bodies must charge applicants fees for access to information:

- time spent, beyond the three free hours, to process the request which includes locating, retrieving and preparing records for disclosure, for the supervision of an applicant examination of a record, and for producing a record from a machine-readable record; and
- a per-page fee for copying records.

Before charging a fee for records, public bodies must provide an estimate of cost to be approved by the applicant. Upon the applicant's request, the Records Manager may waive all or part of the fees if the applicant can demonstrate that paying the full fee would cause undue financial hardship.

Is A Formal ATIPP Request Always Necessary?

The *ATIPP Act* gives individuals the right to access records that are in the possession or under the control of a government department.

However, many requests are for records containing information which may be provided without having to submit a "formal" ATIPP request. These types of requests are called "informal" requests.

Section 1(2) of the *Act* specifically states that the legislation *"does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public independently of this Act"*.

In other words, where possible, individuals should be provided access to government information and records without having to submit an ATIPP access request. Many types of government information are readily available such as publications, brochures, forms, reports, information about government programs and services, and records that are normally available through other legislation or programs (for example, certificates, licenses, etc.)

For records that are routinely disclosed, there is no need for the applicant to make a formal ATIPP request. If you are seeking information from the Yukon government, contact the ATIPP Coordinator from the public body you are seeking information from to determine whether a "formal" ATIPP request is needed.

Refer to Appendix 1 at the back of this publication for a complete listing of Yukon government departmental ATIPP Coordinators.

A Comparison Of Formal/Informal Requests

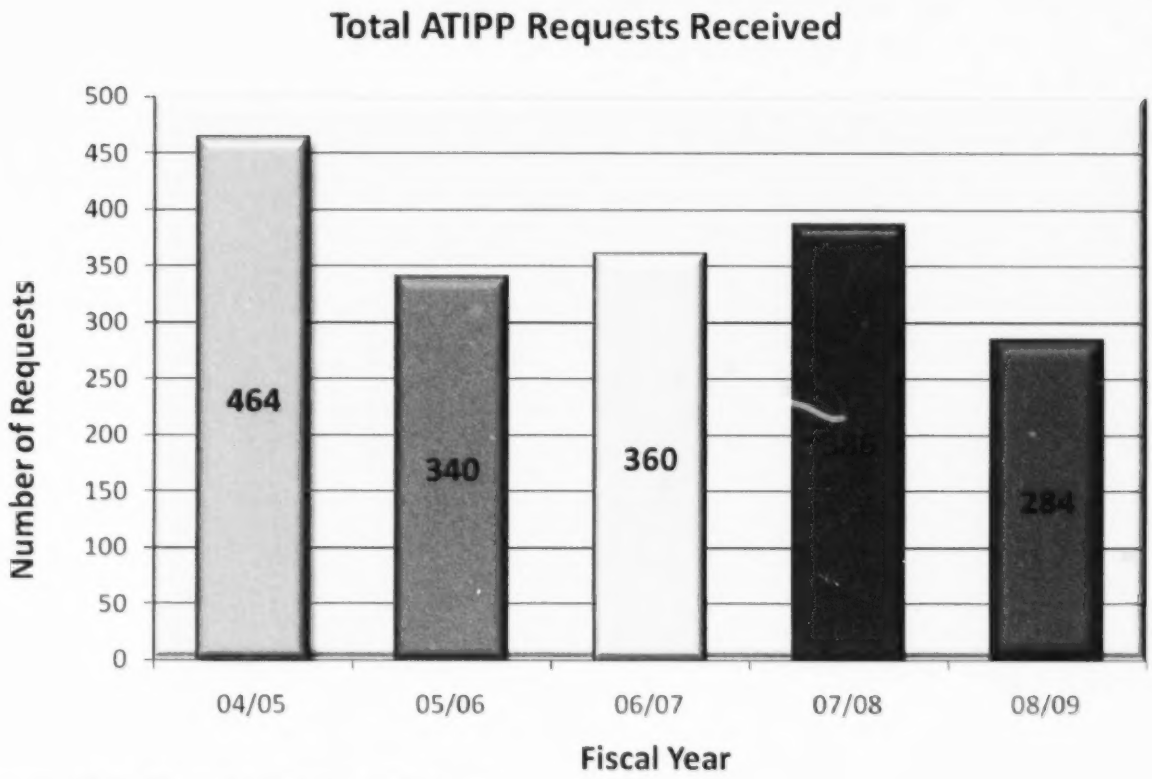
	Formal Requests	Informal Requests
Deadline	Legislated requirement to provide information within 30 calendar days	Information is provided when it is operationally feasible for the branch or work unit to compile and review it for release
Right of Review	Applicants may request a review of the department's decision to refuse information from the Office of the Information and Privacy Commissioner	No rights to have a review by the Office of the Information and Privacy Commissioner
Costs	Applicants are required to pay per-page charge for photocopying and an hourly rate for processing the request	No charge for informal requests unless there is other legislation that allows for it (e.g. driver's abstract)
Applicability of *ATIPP Act*	The principles of the *ATIPP Act* must be applied to both formal and informal requests	

STATISTICS ON ATIPP REQUESTS

General Comments On Reporting

The statistics are compiled from the ATIPP Office Administrative database maintained in the ATIPP Office. The reports provide summaries of formal access requests by department, type of applicant, request disposition, and processing times.

The following graph shows the number of formal requests received. In the 2008/09 reporting year, the ATIPP Office received a total of 284 requests. This reflects a 26.4% decrease from the previous reporting year.



Source: ATIPP Office Administrative Database

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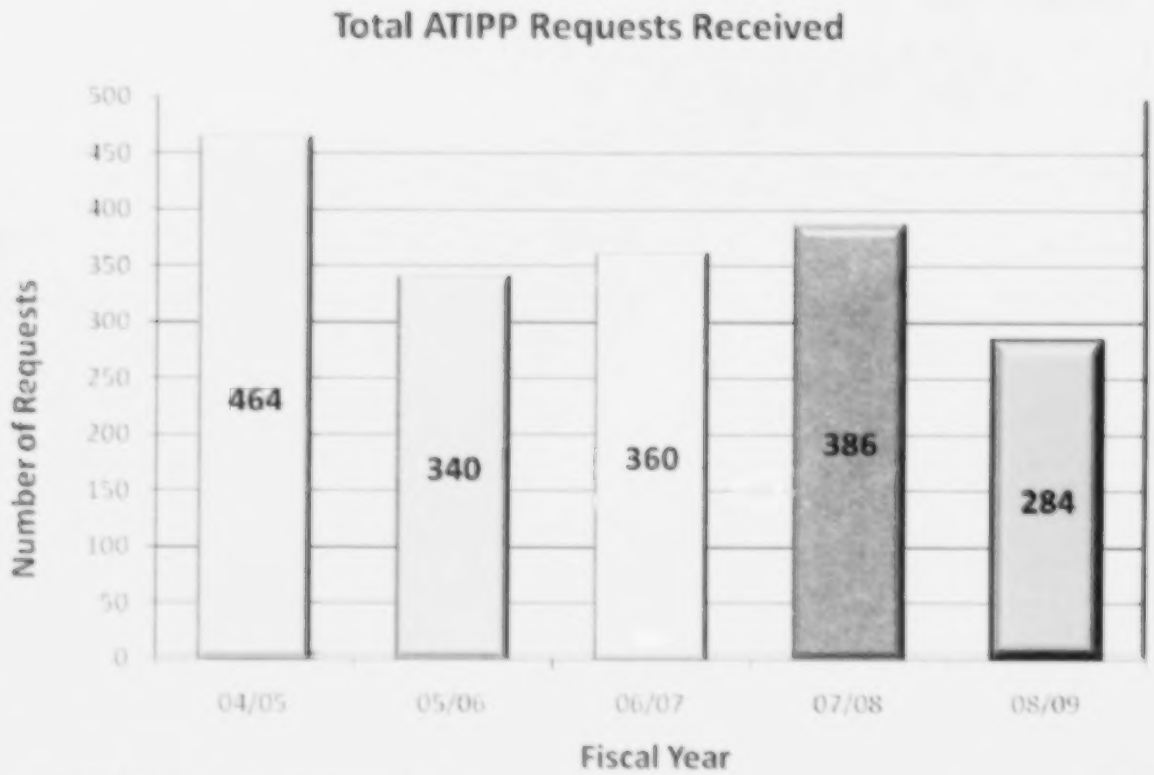


Source: ATIPP Office Administrative Database

Total ATIPP Requests Received By Public Bodies 2008/09

Public Body	# of Requests	% of Total Requests
Community Services	13	4.6
Economic Development	4	1.4
Education	36	12.7
Energy, Mines & Resources	8	2.8
Environment	9	3.2
Executive Council Office	7	2.5
Finance	5	1.8
Health & Social Services	82	28.9
Highways & Public Works	17	6.0
Justice	50	17.6
Public Service Commission	7	2.5
Tourism & Culture and Yukon Archives	32	11.3
Women's Directorate	1	0.4
Yukon Development Corporation	4	1.4
Yukon Energy Corporation*	2	0.7
Yukon Housing Corporation	2	0.7
Yukon Liquor Corporation	4	1.4
Yukon Workers' Compensation Health & Safety Board*	1	0.4

Percentages have been rounded to the nearest tenth.
*Responded that it is not a public body under the *Act*.

Source: ATIPP Office Administrative Database

The table below shows the number of requests received in the 2008/09 reporting year by the type of applicant placing the request.

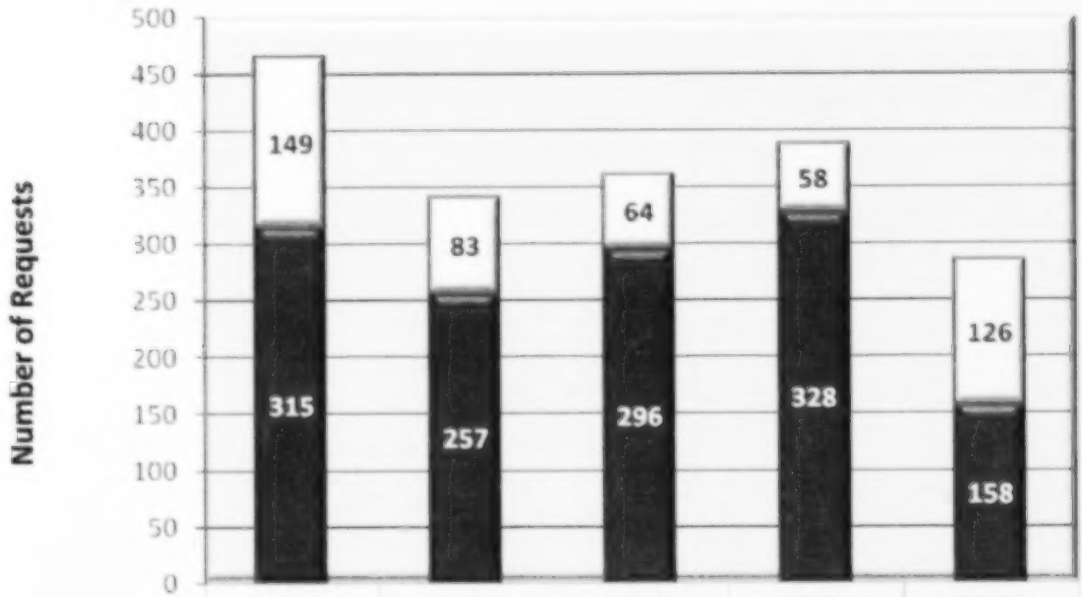
Types Of Applicants For ATIPP Requests Received 2008/09

Type of Applicant	# of Requests	% of Total Requests
Law Firm	135	**47.5%**
Public	61	**21.5%**
Political Party	52	**18.3%**
Media	34	**12.0%**
Other Government	1	**<1%**
Business	0	------
Interest Group	1	**<1%**

Source: ATIPP Office Administrative Database

The most frequent group of applicants was law firms (47.5%), in most cases seeking personal information on behalf of their clients. This number was significantly lower than last year's total of 70.2%; this may be, in part, due to the work underway to resolve residential school claims. The second most frequent group of applicants was members of the public (21.5%).

Incoming Requests for Personal and Program Information



	04/05	05/06	06/07	07/08	08/09
Program Information	149	83	64	58	126
Personal Information	315	257	296	328	158

Source: ATIPP Office Administrative Database

Of all the 284 requests received in the 2008/09 reporting year, 126 (44%) were for personal information from individuals or their representatives; 158 (56%) were for program information.

Correction Of Personal Information

Under section 32 of the *Act*, individuals may seek correction of personal information from public bodies by submitting a formal request for correction, if they believe there is an error or omission in their personal information in government records.

There were no requests for correction of personal information in the 2008/09 reporting year.

Completed Requests

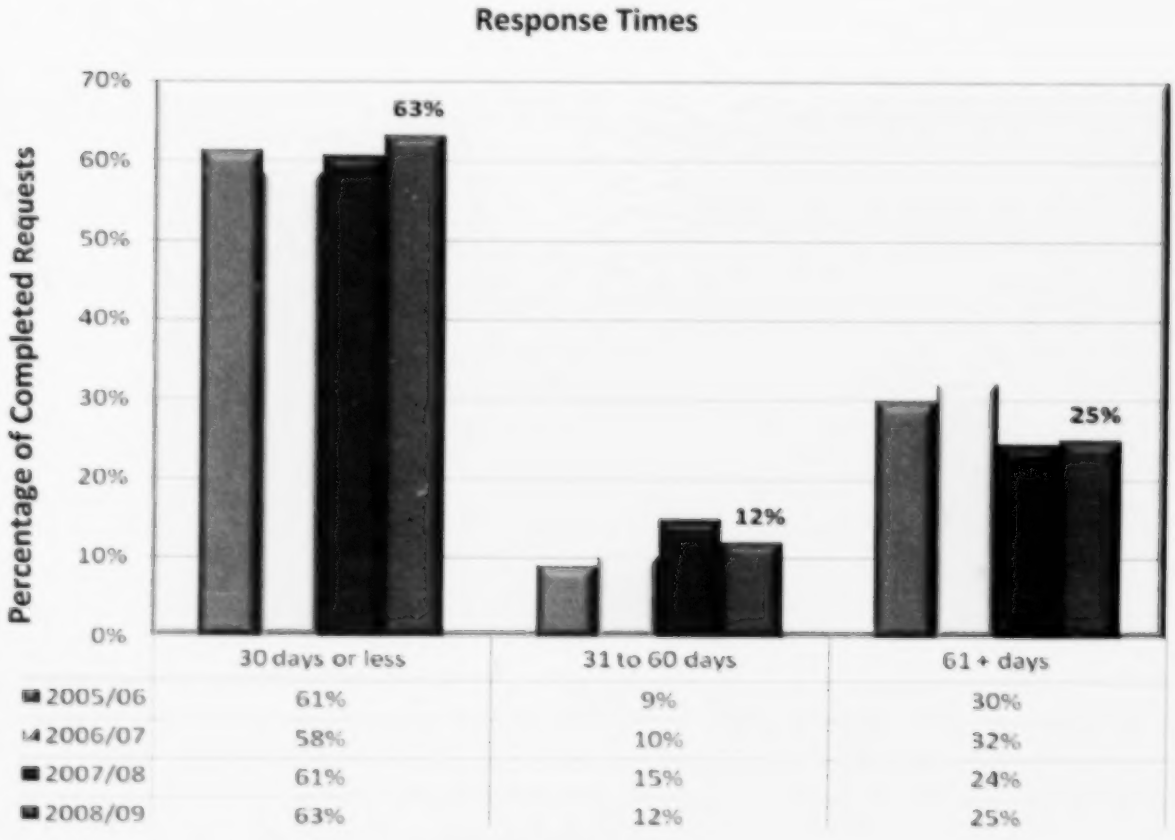
Carried forward as of March 31, 2008	46
New Requests 2008/09	284
Total requests that were open during 2008/09	330
Completed 2008/09	**283**
Carried forward as of March 31, 2009	47

The number of requests completed at the end of the fiscal year continues to be in line with numbers completed in previous years.

Response Times

Of the 283 requests that were completed in the 2008/09 reporting year

- 179 (63%) were completed within 30 days or less,
- 35 (12%) were completed within 31 to 60 days, and
- 69 (25%) were completed in more than 60 days.



Percentages have been rounded to the nearest tenth.
Source: ATIPP Office Administrative Database

The response time for completion of requests is based on "calendar" days and is counted from the date a request is received and activated in the ATIPP Office until the date a final response is mailed to the applicant. Under section 11, the *Act* states that the Records Manager must respond no later than 30 calendar days from the date a request is received in the ATIPP Office, unless the time limit is extended under section 12 of the *Act*.

The Records Manager may extend the time limit for a reasonable period of time if the request for extension from the public body meets one or more of the following criteria:

a) the applicant has not provided enough detail for the public body to identify the record;
b) the request involves a large number of records and meeting the time limit would unreasonable interfere with the operations of the public body;
c) the public body needs more time to consult with a third party or another public body before deciding whether to release the record; or
d) the third party consulted asks for a review under section 48 of the *Act*.

The calculation of the response time does not differentiate between requests that exceed the 30-day time limit due to the following reasons:

- the responses are overdue (i.e., the public body has not been able to meet the deadline);
- the request was extended by circumstances stated under section 12 of the *Act*; or
- the request was placed on hold pending clarification from the applicant, authorization of an Estimate of Costs by the applicant, or payment of the fee by the applicant.

Fees Paid

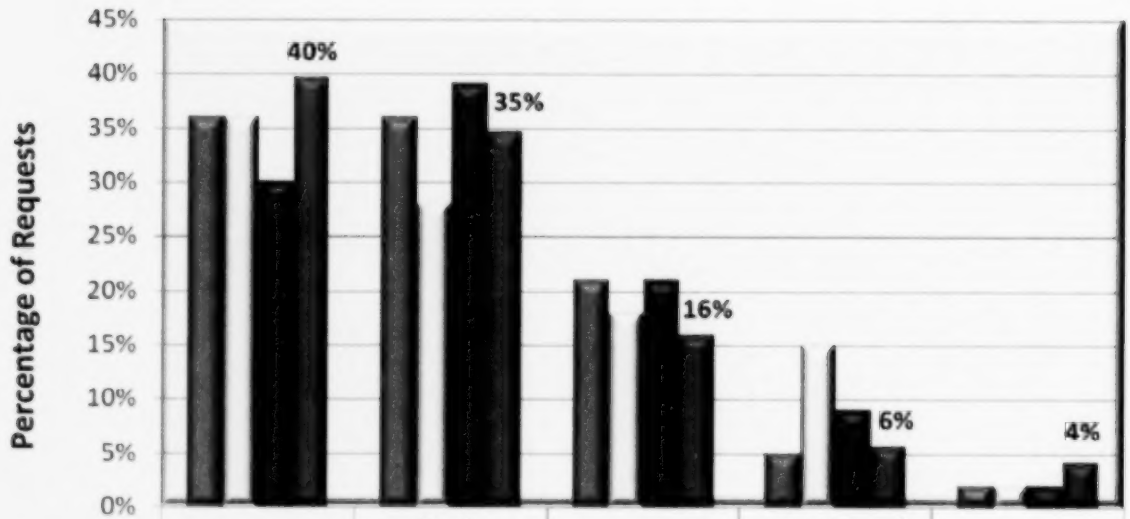
In 2008/09, a total of $6,878.05 in fees were paid by applicants:

- per-page photocopy charge accounted for 53% of the fees received;
- staffing costs related to preparing the records for release (in excess of the three free hours that are granted to each applicant) accounted for 44% of the fees paid; and
- other costs such as shipping accounted for the remaining 3%.

Nine applicants were granted a full or partial fee waiver on the grounds that payment of the fees would have resulted in personal financial hardship.

Access Decisions

Outcome of Requests



	Granted	Partly Granted	No Records	Withdrawn/ Discontinued	Refused
2005-2006	36%	36%	21%	5%	2%
2006-2007	36%	28%	18%	15%	2%
2007-2008	30%	39%	21%	9%	2%
2008/2009	40%	35%	16%	6%	4%

Source: ATIPP Office Administrative Database

Why information may be refused or partly granted/partly refused?

The *ATIPP Act* provides for both mandatory and discretionary exceptions to the release of information. The exceptions are a list of circumstances or conditions where a public body may have the discretion or are required to refuse access to all or part of the record requested.

Mandatory exceptions

Mandatory exceptions require that a public body **must** withhold the following type of information from release:

- Personal information that, if released, would be an unreasonable invasion of a third party's personal privacy under (section 25).
- Records that disclose confidential Cabinet information (section 15).
- Business information that, if disclosed, it would be harmful to third party businesses (section 24).

Discretionary exceptions

The *Act* provides a list of circumstances or categories under which access **may** be denied to part or all of a record:

- Policy advice or recommendations (section 16)
- Disclosure harmful to the financial or economic interest of a public body (section 17)
- Legal advice (section 18)
- Disclosure harmful to law enforcement (section 19)
- Disclosure harmful to intergovernmental relations or negotiations (section 20)
- Disclosure harmful to conservation (section 21)
- Disclosure harmful to individual or public safety (section 22)
- Information that will be published or released within 90 days (section 23)

Note: Please refer to the *Act* for complete details.

Reviewing records that are responsive to a request

Before records are released, they are reviewed within the public body to determine if one or more of the exceptions should or must be applied. This means that the ATIPP Coordinator conducts a line-by-line review of each record, in some instances, with help from the program expert and/or legal counsel.

If an exemption is applied, that part of the record will be severed before it is given to the applicant. In other words, that part of the record will not be disclosed.

Within a single response, a public body may cite several sections of the *Act* as reasons for refusal of information within a record. The number of instances a section is used is not related to the number of requests completed; however, it does provide a clear indication of the reasons for which information is not released.

The following table summarizes the sections of the *Act* that public bodies have cited when records were refused in part or in total.

Reasons for refusal in total or in part for 2008/09

ATIPP Act Section Number	Exceptions to Disclosures	# of Instances Exception Applied
	MANDATORY EXCEPTION	
15	Cabinet confidence	6
24	Disclosure harmful to business interests of a third party	23
25	Disclosure harmful to personal privacy of a third party	237
	DISCRETIONARY EXCEPTION	
16	Policy advice, recommendations, or draft regulations	12
17	Disclosure harmful to the financial of economic interests of a public body	4
18	Legal advice	9
19	Disclosure harmful to law enforcement	3
20	Disclosure harmful to intergovernmental relations or negotiations	15
21	Disclosure harmful to the conservation of heritage sites, etc.	-
22	Disclosure harmful to individual or public safety	2
23	Information that will be published or released within 90 days	3
	EXCLUSIONS	
2	Record of an examination or test question	8
4	Other legislation paramount	3

"The right of citizens to access government held information is absolutely essential. Otherwise citizens cannot hold elected and appointed officials accountable to the people they serve. Without openness and accountability you cannot have a strong democratic society."

Ann Cavoukian – Information and Privacy Commissioner of Ontario

APPENDIX 1

ATIPP Departmental Coordinators Contact List as of September 2009

General Contacts

ATIPP OFFICE
Department of Highways and Public Works

Records Manager	Judy Pelchat	(867) 667-8211
ATIPP Act Coordinator	Vacant	(867) 393-7048
ATIPP Office Assistant	Judy Carson	(867) 393-7031

General inquiries: (867) 393-7031
Toll free: In Yukon, 1-800-661-0408, local 7031
Fax: (867) 393-6916
Email: atipp@gov.yk.ca
Website: atipp.gov.yk.ca

Office of the Information and Privacy Commissioner

Information and Privacy Commissioner (IPC)	Tracy-Anne McPhee
Senior Investigator/Mediator	Catherine Buckler Lyon
Administrative Assistant	Alice Purser

Phone (867) 667-8468
Fax (867) 667-8469

Departmental Contacts

Department of Community Services

Coordinator	Brian Currie	Phone (867) 667-8938	Fax (867) 393-6264
Alternate	Vacant		

Department of Economic Development

Coordinator	Karen Mason	Phone (867) 667-5933	Fax (867) 393-7199
Alternate	Vacant		

Department of Education

Coordinator	James McCullough	Phone (867) 667-8326	Fax (867) 667-5876
Alternate	Ann MacDonald	Phone (867) 667-8181	Fax (867) 667-5876

Department of Energy, Mines and Resources

Coordinator	Anne Powers	Phone (867) 456-3854	Fax (867) 456-3965
Alternate	Jenny Whitehouse	Phone (867) 667-3097	Fax (867) 456-3965

Department of Environment

Coordinator	Vicki McCollum	Phone (867) 667-3029	Fax (867) 393-7197
Alternate	Melanie Lucas	Phone (867) 456-6525	Fax (867) 393-6213

Executive Council Office

Coordinator	Carolyne Thompson	Phone (867) 393-7173	Fax (867) 393-6202
Alternate	Karen Hougen-Bell	Phone (867) 667-8201	Fax (867) 393-6202

Department of Finance

Coordinator	Bill Curtis	Phone (867) 667-5276	Fax (867) 393-6217
Alternate	Chelsea Larouche	Phone (867) 667-5343	Fax (867) 393-6217

Department of Health and Social Services

Coordinator	Jennifer Szakszon	Phone (867) 667-5919	Fax (867) 393-6457
Alternate	Jean Jobagy	Phone (867) 667-8339	Fax (867) 393-6457

Department of Highways and Public Works

Coordinator	Carol Currie	Phone (867) 667-5258	Fax (867) 393-6245
Alternate	Sandra Lutner	Phone (867) 667-5192	Fax (867) 393-5479

Department of Justice

Coordinator	Dan Cable	Phone (867) 667-3508	Fax (867) 667-5790
Alternate	Vacant		

Public Service Commission

Coordinator	Mary Martin	Phone (867) 667-8160	Fax (867) 667-6705
Alternate	Liz McKee	Phone (867) 667-3537	Fax (867) 667-6705

Department of Tourism and Culture

Coordinator	Valerie Neufeld	Phone (867) 393-6460	Fax (867) 393-6469
Alternate	Ian Burnett	Phone (867) 667-5321	Fax (867) 393-6253

Yukon Development Corporation

Coordinator	Krista Roske	Phone (867) 393-5336	Fax (867)
Alternate	Vacant		

Yukon Housing Corporation/Yukon Liquor Corporation/Lotteries Yukon

Coordinator	Cristina Nelson	Phone (867) 667-8493	Fax (867) 393-6264
Alternate	Vacant		

ISSN 1916-0275